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REED SMITH LLP				
101 Second Street				
Suite 1800				
SAN FRANCISCO, CA 94105				
EXAMINER				
THAKUR, VIREN A				
ART UNIT		PAPER NUMBER		
1794				
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11/12/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/721,583

**Applicant(s)**

MITCHELL ET AL.

**Examiner**

VIREN THAKUR

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 August 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,4-10,12,15,19,22,24,33-41 and 66-72 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-10,12,15,19,22,24,33-41 and 66-72 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 10 recites the limitation "transport vehicle." It is not clear as to how the term vehicle is used. That is, is a vehicle similar to a transport mechanism that moves the totes into a washing tank?

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**4. Claims 1,2,4, 5,7,19,22,66-69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US 20030126850 A1) in view of Brown et al. (US 6298865), Garcia, Jr. et al. (US 6626192), Tarantino et al. (US 20040187465 A1), Mitchell et al. (US 6112429), Cress et al. (US 6223502) and Levey et al. (US 5566695), for the reasons given in the previous Office Action, mailed February 5, 2009.**

Claim 1 newly incorporates those limitations of claims 16-18. Specifically, claim 1 newly recites cleaning the de-cored products in the tote by immersing the tote in a wash tank for cleaning, wherein the wash tank comprises a flow of washing fluid in a direction toward the de-cored ends of the products, such that the first side of the tote faces the direction of flow of washing fluid, whereby the flow of washing fluid flows through the de-cored ends of each product to an opposite end of each product.

Regarding this limitation, it is noted that Brown '850 already teaches washing de-cored lettuce wherein the de-cored lettuce has been placed such that the latex within the de-cored section is allowed to flow from the cut portions. Since Brown '850 does not teach any intrusive method for removing the latex, it would have been obvious that the de-cored lettuce would have required gravity, for instance, to facilitate "bleeding." Furthermore, Brown '850 teaches that the totes have holes throughout for the purpose of allowing the sap that has been bled to drain through the bottom, thus teaching that the de-cored lettuce are arranged against a side, such as the bottom of the container. As a further method for washing the de-cored lettuce, Brown '850 teaches using upward

and downward sprays but also teaches submersion of the containers in a liquid. Since Brown '850 teaches employing a conveyor/chain drive for allowing the totes to sit on the conveyor and move through the wash station, it would have been obvious to one having ordinary skill in the art to have employed another conventional washing technique, such as submersion for the purpose of washing the de-cored lettuce contained within the totes.

Regarding the wash tank comprising a flow of washing fluid in a direction toward the de-cored ends of the products, it is noted that since the products are de-cored, that when submerging it would have been obvious to one having ordinary skill in the art that the washing liquid would have flowed through the de-cored ends of the products.

Claims 2, 4, 5, 7, 19, 22, 66-69 are rejected for the reasons given in the previous Office Action, mailed February 5, 2009.

**5. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1,2, 4, 5, 7, 19, 22, 66-69, above, and in further view of Hererra (US 20030217650) for the reasons given in the previous Office Action, mailed February 4, 2009.**

**6. Claims 8-10, 12 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1, 2, 4, 5, 7, 19, 22, 66-69, above, and in further view of Hougham (US 5316778), Busta (US 3814820),**

**Crossett (US 2666711), Bell et al. (US 1708253) and Alameda (US 5130152) for the reasons given in the previous Office Action, mailed February 4, 2009.**

**7. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1, 2, 5, 7, 19, 22, 66-69, above and in further view of Terry (US 5711980) for the reasons given in the previous Office Action, mailed February 4, 2009.**

**8. Claims 33-36, 40-41, 70-72 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1, 2, 5, 7, 19, 22, 66-69, above and in further view of Hougham (US 5316778) for the reasons given in the previous Office Action, mailed February 4, 2009.**

**9. Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 33-36, 40-41, 70-72 above, and in further view of Fox et al. (US 2644473) for the reasons given in the previous Office Action, mailed February 4, 2009.**

**10. Claims 38-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 33-36, 40-41, 70-72, above, and in further view of Hougham (US 5316778), Busta (US 3814820), Crossett (US 2666711), Bell**

**et al. (US 1708253) and Alameda (US 5130152) for the reasons given in the previous Office Action, mailed February 4, 2009.**

**11. Claims 1, 2, 4, 5, 7-10, 12, 15, 19, 22, 33-41 and 66-72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mitchell et al. (US 6112429) in view of Hougham (US 5316778) and in further view of Brown (US 20030126850), Brown et al. (US 6298865), Garcia, Jr. et al. (US 6626192) and Tarantino et al. (US 20040187465 A1). Cress et al. (US 6223502) and Levey et al. (US 5566695) has been relied on as evidence.**

The claims are rejected for the reasons given in the previous Office Action, mailed February 4, 2009.

As discussed above, claim 1 newly incorporates those limitations previously recited in now cancelled claims 16-18. Mitchell et al. already teach employing a submersion for the purpose of washing lettuce. Hougham, Brown '850, Brown '865 further teach submersion for the purpose of washing produce such as de-cored lettuce. Since the art has recognized de-coring and washing the de-cored lettuce, by employing a submersion technique, it would have been obvious to one having ordinary skill in the art that the immersion would have resulted in a flow through the de-cored ends of the lettuce.

**12. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1, 2, 4, 5, 7-10,12, 15, 19,22, 33-41 and 66-72, above in paragraph 11, and in further view of Herrera (US 20030217650), for the reasons given above in paragraph 5.**

**13. Claim 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1, 2, 4, 5, 7-10,12, 15, 19,22, 33-41 and 66-72 , above in paragraph 11 and in further view of Terry (US 5711980), for the reasons given above in paragraph 7.**

### ***Response to Arguments***

14. On pages 11-13 applicants urge that the examiner has applied a large number of references, in hindsight, for the purpose of arriving at applicant's invention.

15. This argument has been considered but is not persuasive. It is noted that applicant appears to indicate that the purpose of the totes is for the purpose of minimizing handling of the produce after de-coring and loading into totes, which subsequently facilitate washing and drying of the produce. Nevertheless, the concept of minimizing handling by performing a separate de-coring step with subsequent placement into a tote which is subsequently washed and dried has been a conventional



concept in the art, as evidenced by Brown '850 and Cress et al. Therefore, the art teaches that if one desired to minimize handling of the produce after de-coring, then it would have been obvious to have performed a washing and drying step while the de-cored produce was contained within a container that allows for washing and subsequent drying of the produce. Additionally, it is noted that references such as Tarantino et al. and Garcia Jr. clearly teach washing de-cored produce such as lettuce, by allowing the washing medium to flow through the de-cored produce. These references also teach employing structured arrangements of the de-cored produce, for the purpose of washing the de-cored produce. Since Brown '850 already teaches placing de-cored produce into a tote and further teaches washing the de-cored produce, to employ a particular conventional arrangement of the de-cored produce would have been an obvious matter of choice and/or design, for the purpose of facilitating cleaning of the produce. Thus, applicant is not the first to de-core lettuce, place the lettuce in a tote and wash the lettuce while in a tote.

16. On page 13 of the response, applicants urge that there is no disclosure that the washing fluid necessarily flows from the de-cored end to an opposite end of the Brown '850 reference.

This argument has been considered but is not persuasive. It is noted that the art taken as a whole clearly teaches that when de-coring lettuce, that the whole head nature of the lettuce has been retained, as evidenced by Tarantino et al., for instance (paragraph 0046). As further evidence, it is noted that Garcia, Jr. et al. teach washing

de-cored lettuce by spraying from above and below the lettuce. Garcia Jr. et al. teaches that removing the core further improves the washing of the lettuce (column 4, line 64 to column 5, line 10). Figure 5 of Garcia et al. also teaches that removal of the core of the lettuce results in a pass-through opening such that the washing sprays can flow through and around the lettuce. Since the art relied on is also de-coring lettuce similar to that of applicant and since Garcia Jr. et al. even teach a lettuce head with only the leafy portion (i.e. core removed), it is noted that the art teaches de-coring lettuce such that the washing fluid would flow through the de-cored portion, especially since the art teaches employing spraying by washing on opposite sides of the de-cored lettuce.

17. Further on page 13 of the response, applicants urge that Brown does not teach the need/desire for a wash tank.

This argument has been considered but is not persuasive, since on paragraph 0043, Brown '850 teaches employing a conveyor onto which the tote has been placed to pass through the washing system and further teaches that the washing system can include submerging of the containers in liquid. By teaching submerging of the container, obviously this would have required the use of an immersion tank. Furthermore, it is noted that Mitchell et al. '429 further evidence that it was conventional to submerge produce for the purpose of cleaning the produce, as discussed in the Office Action.

18. On page 14 of the response, applicants urge that Mitchell '429 fails to teach placing de-cored products into a tote and aligning the de-cored ends against a side of the tote.

This argument has been considered but is not persuasive. It is noted that Mitchell '429 has been relied on to teach the concept of washing produce by aligning the produce for allowing the washing medium to flow thereinto. The claim differs in reciting placing de-cored lettuce into a tote prior to this washing step. Nevertheless, Brown '850 teaches that it has been a conventional expedient to de-core and then place lettuce into a tote for further processing such as washing and drying. Hougham further evidences that it has been a conventional process in the art to place produce having its core removed into containers such that produce without the cores has been washed, dried and packaged within this same container with the advantage of minimizing handling damage (column 1, lines 25-27). Therefore, to modify Mitchell '429 and first core and place into a container and subsequently wash and dry would thus have been obvious to one having ordinary skill in the art, for the purpose of minimizing produce damage due to handling. Furthermore, since Brown '850 already teaches washing de-cored lettuce while in the container it would have been obvious to the ordinarily skilled artisan that eliminating the two steps of placing lettuce onto a conveyor and subsequently placing the lettuce into container for drying would have further facilitated minimizing damage due to handling of the lettuce.

Regarding the flow of washing fluid flowing through the de-cored ends, it is noted that obviously, since Mitchell '429's lettuce has not been cored, the washing fluid would

not have been expected to flow through de-cored ends. However, Brown '840, Brown '865 and Hougham teach the advantages of first de-coring for the purpose washing and removing the sap present in the lettuce while also minimizing handling, as discussed above.

19. Further on page 14 of the response, applicants urge that Garcia fails to disclose placing totes in a washing fluid and that spraying produce is not the same as placing the produce in a washing fluid such that washing fluid flows through the de-cored ends. This argument has been considered but is not persuasive. It is noted that Garcia has not been relied on for placing the produce into a washing fluid as claimed. It is noted however, that Garcia does teach that the core of the lettuce is removed, as shown in figure 5, such that a flow of washing fluid from above and below would flow through the de-cored lettuce, for improving the washing of the lettuce.

20. On page 15 of the response, applicants urge that Hougham is directed to a technique whereby leafy vegetables have their leaves torn from the vegetable stems and then are sorted into separate baskets. It is noted that although the products treated by Hougham might not be the de-cored lettuce as recited by applicants, Hougham does teach removing the core from produce and subsequent placement of produce into container which can be used for washing, drying and packaging of the produce for the purpose of minimizing handling of the product. Thus, whether Hougham treated the same product as applicants or not, the reference teaches applicants' concept providing

a container into which a product that has had its core removed has been placed and within which the product can be washed, dried and packaged for the purpose of minimizing damage to the product as a result of handling the produce during these processes.

21. On page 15 of the response, Applicants urge that a key failing of the combination cited by the Office Action is that the references do not teach arranging the de-cored produce in a specific direction in totes, such that when immersed in wash tanks, the washing fluid can flow in a specific direction through the produce. Applicant further urges that the references do not disclose arranging the de-cored products in such a way that the de-cored ends face against a side of the tote. Applicants further urge that the references fail to disclose that the washing fluid is specifically directed to flow through the de-cored end. Thus, applicants urge that the references clearly do not anticipate the present claims.

These arguments have been considered but are not persuasive. Regarding the arrangement of the de-cored produce in a specific direction on the totes, it is noted that applicants' claims only recite that the de-cored ends face a side of the tote. Regarding Brown '850, it is noted that since the washing sprayers employed for washing the de-cored lettuce are above and below the de-cored lettuce, then it would have been obvious that the de-cored lettuce within the tote would have faced a side, such as the bottom of the tote. Regarding the particular arrangement of the de-cored produce, it is noted that references such as Garcia Jr., Brown '865 and Tarantino et al. all teach a

uniform arrangement of the produce on a conveyor. The claims differ from these references in employing a tote when uniformly arranging the produce. Nevertheless, Mitchell et al. teaches employing the same arrangement when washing and drying the lettuce. To therefore employ this arrangement would have been obvious to one having ordinary skill in the art, since Mitchell et al. teaches that this particular orientation of rows of lettuce facilitate drying when spin drying. To therefore arrange the de-cored lettuce into a particular alignment within a tote, would thus have been an obvious to one having ordinary skill in the art for the purpose of facilitating spin drying, for instance. Additionally, it is noted that since the art already teaches washing the inside of de-cored lettuce, it would also have been obvious common sense, that if one desired to simultaneously wash multiple de-cored lettuce heads in a single washing pass, to align the holes of the multiple de-cored lettuce heads so as to allow the washing fluid to flow there-through, for the purpose of improving the efficiency of the washing process.

Regarding applicants urging with respect to the de-cored produce facing a side of the tote, the claims are not specific as to what side is being claimed and thus by teaching the bottom of the container, the art teaches the de-cored produce facing a side.

Regarding applicants urging with respect to the flow of the washing fluid through the de-cored end, it is noted that the art teaches de-coring lettuce such that a hole is present through the center of the lettuce (where the core would have been). The art also teaches employing jets to spray washing fluid for washing from above, and below while still washing the core, as evidenced by Garcia Jr, for instance. If one immersed

the tote into an immersion tank, which Brown '850 already teach, then it would have been obvious that upon submersion, the washing fluid would have flowed through the de-cored ends of the produce.

22. On page 16 of the response, applicants urge that the examiner is relying on individual elements from a multitude of references without support for why such a combination would in fact be obvious. This argument has been considered but is not persuasive. It is noted that the art teaches de-coring produce, such as lettuce because cores can be undesirable. The art further teaches allowing the sap/latex to drip out from the core and then teaches washing the de-cored lettuce because, obviously, dirt and debris (and sap) should be washed away from the lettuce for sanitary/freshness purposes (Brown '850, '865, Hougham, Garcia Jr. et al., Tarantino et al.). The art teaches motivation for employing applicant's claimed arrangement, such as for facilitating spin drying (Mitchell '429). The art also teaches that it has been conventional to employ aligned / uniform arrangements of de-cored products for the purpose of facilitating the washing of these cores (Brown '850, '865, Garcia Jr. et al., Tarantino et al. and Levey et al.). Finally, the art teaches minimizing handling of produce during the washing, drying and packaging steps, for the purpose of minimizing damage to the produce, which also appears to be one of applicants' purposes. Therefore, it is noted that applicants process of placing produce that has been de-cored into a container and subsequently washing and drying while in said container has already been taught by the

art to be advantageous for the purpose of preventing damage that could be caused by handling.

### ***Conclusion***

23. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VIREN THAKUR whose telephone number is (571)272-6694. The examiner can normally be reached on Monday through Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571)-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steve Weinstein/  
Primary Examiner, Art Unit 1794

/V. T./



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Examiner, Art Unit 1794